

FRESHFIELDS BRUCKHAUS DERINGER US LLP

Timothy P. Harkness (admitted *pro hac vice*)

[Timothy.harkness@freshfields.com](mailto:Timothy.harkness@freshfields.com)

Pamila Gudkov (admitted *pro hac vice*)

[Mila.gudkov@freshfields.com](mailto:Mila.gudkov@freshfields.com)

601 Lexington Avenue, 31st Floor

New York, NY 10022

Tel: (212) 277-4000

Fax: (212) 277-4001

Frank J. Polek (State Bar No. 167852)

[frank@poleklaw.com](mailto:frank@poleklaw.com)

701 B Street, Suite 1110

San Diego, CA 92101

Telephone: 619-550-2455

Facsimile: 619-274-8166

Attorneys for Defendants Kinderhook  
Industries II, LP; Kinderhook Industries,  
LLC; and Kinderhook Capital Fund II, LP

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MONTGOMERY,

Plaintiff,

vs.

WAL-MART STORES, INC.;  
KINDERHOOK INDUSTRIES II, LP;  
KINDERHOOK INDUSTRIES, LLC;  
KINDERHOOK CAPITAL FUND II,  
LP; CRESTWOOD HOLDINGS, INC.;  
BERGAN, L.L.C.; JOHN ELMBURG;  
ROBERT ELMBURG; ERIC  
ELMBURG; ROCKY FLICK; HOME  
DEPOT U.S.A., INC.; and Does 1  
through 20, inclusive,

Defendants.

Case No. 12-CV-3057-JLS-DHB

**NOTICE OF MOTION AND  
MOTION OF DEFENDANTS  
KINDERHOOK CAPITAL FUND II,  
L.P., KINDERHOOK INDUSTRIES  
II, L.P., AND KINDERHOOK  
INDUSTRIES, LLC TO DISMISS  
OR, IN THE ALTERNATIVE,  
STAY**

DATE: May 2, 2013

TIME: 1:30 p.m.

JUDGE: Hon. Janis L. Sammartino

CTRM: 3B

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on Thursday, May 2, 2013, at 1:30 p.m., in  
3 Courtroom 3B of the United States District Court for the Southern District of  
4 California, located at 333 West Broadway, San Diego, California 92101, the  
5 Honorable Janis L. Sammartino presiding, Defendants KINDERHOOK INDUSTRIES  
6 II, L.P., KINDERHOOK INDUSTRIES, LLC and KINDERHOOK CAPITAL FUND  
7 II, L.P. will move to dismiss the Complaint by Plaintiff MICHAEL MONTGOMERY  
8 for lack of standing, lack of personal jurisdiction, and failure to state a claim for relief  
9 or, in the alternative, for a stay.

10 This motion will be based on this Notice of Motion and Motion, the  
11 accompanying Memorandum of Points and Authorities in Support thereof, the  
12 accompanying Declaration of Louis Aurelio in Support thereof, any matters on which  
13 the Court may properly take judicial notice, and the complete records and files in this  
14 action.

15  
16 Dated: March 25, 2013

17 **FRESHFIELDS BRUCKHAUS**  
18 **DERINGER US LLP**

**FRANK POLEK, ATTORNEY AT**  
**LAW**

19 s/ Timothy P. Harkness  
20 Timothy P. Harkness  
21 Attorney for Defendants

s/ Frank J. Polek  
Frank J. Polek  
Attorney for Defendants